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10/689,230

10/20/2003

David A. Ebert

67167-009

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26096 7590 12/05/2008  
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EXAMINER

ESTREMSKY, GARY WAYNE

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex Parte* DAVID A. EBERT

Appellant

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Appeal 2007-0787  
Application 10/689,230  
Technology Center 3600

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Decided: December 05, 2008

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Before RICHARD E. SCHAFER, RICHARD TORCZON and  
ROMULO H. DELMENDO, *Administrative Patent Judges*.

SCHAFER, *Administrative Patent Judge*.

DECISION ON REHEARING

Applicant requests reconsideration pursuant to 37 C.F.R.  
§§ 41.50(b)(2) and 41.52.<sup>1</sup> We deny the request.

Our decision reversed the rejection of all claims and entered a new ground of rejection as to Claim 1 under 35 U.S.C. § 103(a). The panel did not express any view on the effect of the new ground on the remaining claims.

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<sup>1</sup> Applicant's request was not received by the panel until November 5, 2008.

An applicant may request reconsideration pointing out, with particularity, matters thought to have been overlooked or misapprehended by the panel in reaching its decision. 37 C.F.R. § 41.52(a)(1).

Applicant argues that “the Board overlooked the opportunity to advance the application by expressing no view as to the patentability of claims 2-4 and 6-11.” Recon, p. 2, ¶ 1. Applicant then asks that “the Board address the rejection of the remaining claims 2-4 and 6-11.”

We neither failed to address the rejection of Claims 2-4 and 6-11, nor overlooked the “opportunity” to advance the application. Our decision reversed all the rejections entered by the examiner as to all claims. Decision, p. 7, ll. 3-7. While entering a new ground, we also expressly declined to consider the effect of the new ground on the patentability of Claims 2-11 leaving that determination to the examiner. Decision, p. 7, ll. 8, ll. 21-23,

Applicant speculates that the Examiner will reject Claims 2-11 utilizing the same references and same bases used during prosecution and invites us to review the speculated rejections. Recon., p. 2. We decline the invitation. The new ground of rejection relied on a different basis for unpatentability than relied on by the examiner. The application of the new ground to the more detailed subject matter of Claims 2-11 is, in our view, best left to the expertise of the examiner.

REHEARING DENIED

Appeal 2007-0787  
Application 10/689,230

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